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Hong Leong Bank Bhd v Asakura Industry Sdn Bhd & Ors

HIGH COURT (SANDAKAN) — SIVIL SUIT NO D3–22–2322 OF 2000
MOHAMAD ARIFF J
6 AUGUST 2010

Banking — Guarantee and indemnity — Joint and several guarantee — Default of payment by first defendant — Action to recover monies — Whether second and third defendants liable — Allegation of forgery of signature — Whether established — Whether second and third defendants liable as joint and several guarantors

Civil Procedure — Pleading — Statement of defence — Forgery or fraud — Whether pleaded — Whether lacking in full particulars — Whether general allegation of fraud insufficient — Whether allegation out to be dismissed — Rules of the High Court 1980 O 18 r 19

Evidence — Standard of proof — Balance of probabilities — Fraud and forgery — high degree of probability — Whether existence of fraud improbable in circumstances

The plaintiff was suing the first defendant to recover monies due and owing to them under a banking facility granted to the first defendant. As against the second and third defendants, the plaintiff was suing them in their capacities as personal guarantors. The second defendant was the wife of the third defendant. There was no issue on the utilisation of the overdraft facility which was disbursed in various statements of account to the first defendant in this regard, for which the first defendant made a number of repayments. The first defendant subsequently failed to make repayments and to regularise the facility, hence resulting in the breach of its repayment obligations under the letter of offer. The second and third defendants denied any liability, and in fact denied vehemently that they executed any joint and several guarantee as individuals. Instead, the second and third defendants alleged that they had merely signed a corporate guarantee and not a joint and several personal guarantee. In relation to the 'corporate guarantee' which was signed, they alleged forgery of the signature of the solicitor who was said to have witnessed their signatures. Further, the third defendant denied signing the letter of offer on 17 February 1997. Apart from the above, the second and third defendants alleged falsification of the circular resolution carrying the same date. The main issues in

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this case revolved on the liability of the second and third defendants as joint and several guarantors.

Held, allowing the application with costs to be taxed:

(1) The evidence was clear on the point that the overdraft facility was disbursed to the first defendant. In fact, there were repayments made until the facility fell into default. In any event, the third defendant actually admitted the first defendant was liable to repay the overdraft facility (see paras 4 & 6).

(2) The defendants had failed to establish forgery and fraud. On the contrary, the plaintiff had succeeded to prove its case on a balance of probabilities. The evidence led by the defendants on the issues of fraud and forgery was highly improbable. The testimonies of the second and third defendants (who gave evidence as DW1 and DW3) had been inconsistent and evasive and could not be readily reconciled with the contemporaneous documents (see para 8).

(3) During the course of the trial, the original joint and several guarantee was produced, and it was plain that the second and third defendants could not have signed a corporate guarantee, for on the page bearing their signatures, the provisions reflected a guarantee document in the nature of a composite guarantee document which could be applied to both a corporate or a personal guarantee depending on which page was signed. The signature pages in this document contained two parts headed '(where the Guarantor (s) is/are individuals)' and '(where the Guarantor (s) is/are Companies)'. DW1 and DW2 signed on the page headed the former. The evidence presented by DW1 and DW2 was therefore highly improbable and could not stand scrutiny when set against the actual documents. The fact remained that the second and third defendants signed the present guarantee. Their signatures were genuine (see paras 11 & 16).

[Bahasa Malaysia summary

Plaintif mendakwa defendan pertama bagi mendapatkan wang yang kena dibayar dan terhutang kepada mereka di bawah satu kemudahan perbankan yang diberikan kepada defendan pertama. Sementara itu, plaintif mendakwa defendan kedua dan ketiga di dalam kapasiti mereka sebagai penjamin peribadi. Defendan kedua merupakan isteri kepada defendan ketiga. Tidak terdapat isu penggunaan kemudahan overdraf yang dikeluarkan di dalam pelbagai penyataan akaun kepada defendan pertama, di mana defendan pertama telah membuat beberapa pembayaran semula. Defendan pertama kemudiannya gagal untuk membuat pembayaran semula dan menetapkan kemudahan, mengakibatkan pelanggaran kewajipan pembayaran semula di bawah surat tawaran. Defendan kedua dan ketiga menafikan sebarang liabiliti

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dan dalam fakta, menafikan sekeras-kerasnya bahawa mereka membuat sebarang jaminan bersama atau berasingan sebagai individu. Malah, defendan kedua dan ketiga menghujah bahawa mereka hanya menandatangani sebuah jaminan korporat dan bukannya jaminan peribadi bersama atau berasingan. Berhubung 'jaminan korporat' yang telah ditandatangani, mereka menghujah tandatangan peguamcara yang menjadi saksi kepada tandatangan mereka telah dipalsukan. Selanjutnya, defendan ketiga menafikan menandatangani surat tawaran pada 17 Februari 1997. Selain itu juga, defendan kedua dan ketiga menghujah pemalsuan resolusi pekeliling pada tarikh yang sama. Isu utama di dalam kes ini melibatkan liabiliti defendan kedua dan ketiga sebagai penjamin bersama dan berasingan.

Diputuskan, membenarkan permohonan dengan kos untuk ditaksir:

(1) Keterangan adalah jelas mengenai kemudahan overdraf yang dikeluarkan kepada defendan pertama. Malah, terdapat beberapa pembayaran semula dibuat sehingga kemudahan tersebut dimungkiri. Dalam apa jua keadaan, defendan ketiga sediri mengakui defendan pertama bertanggungjawab untuk membayar semula kemudahan overdraf (lihat perenggan 4 & 6).

(2) Defendan-defendan gagal untuk membuktikan pemalsuan dan penipuan. Sebaliknya, plaintif berjaya membuktikan kes beliau atas imbangan kebarangkalian. Keterangan yang diberikan oleh defendan-defendan mengenai isu-isu penipuan dan pemalsuan adalah berkebarangkalian tinggi. Testimoni-testimoni defendan kedua dan ketiga (yang memberi keterangan sebagai SD1 dan SD3) tidak konsisten, mengelak dan tidak boleh dihubungkan dengan dokumen-dokumen yang wujud (lihat perenggan 8).

(3) Sepanjang perbicaraan, jaminan bersama dan berasingan asal dikemukakan dan adalah jelas bahawa defendan kedua dan ketiga tidak mungkin menandatangani jaminan korporat. Ini merujuk kepada muka surat yang mengandungi tandatangan mereka, peruntukan-peruntukan tersebut jelas menunjukkan jaminan yang bersifat gabungan iaitu boleh digunapakai sebagai jaminan korporat dan peribadi bergantung kepada muka surat yang ditandatangani. Mukasurat tandatangan di dalam dokumen ini mengandungi dua bahagian bertajuk '(di mana Penjamin adalah individu)' dan '(di mana Penjamin adalah Syarikat)'. SD1 dan SD2 menandatangani mukasurat terdahulu. Oleh itu, keterangan yang dikemukakan oleh SD1 dan SD2 adalah berkeberangkalian tinggi dan tidak dapat ditegakkan apabila ditanyakan bertentangan dengan dokumen-dokumen sebenar. Fakta yang pasti adalah defendan kedua dan ketiga menandatangani jaminan tersebut. Tandatangan mereka adalah asli (lihat perenggan 11 & 16).]

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Notes

For a case on balance of probabilities, see 7(2) *Mallal's Digest* (4th Ed, 2011 Reissue) para 2646.

For a case on joint and several guarantee, see 1(2) *Mallal's Digest* (4th Ed, 2010 Reissue) para 2425.

For cases on statement of claim, see 2(3) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 6160–6199.

Cases referred to

Aik Ming (M) Sdn Berhad & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770, CA (refd)

Cempaka Finance Bhd v Ho Lai Ying [2006] 3 CLJ 544, FC (refd)

Chu Choon Moi v Ngan Siew Tin [1986] 1 MLJ 34, SC (refd)

Lee Kim Luang v Lee Shiah Yee [1988] 1 MLJ 193 (refd)

Superintendent of Lands and Surveys (4th Div) & Anor v Hamit bin Matusin & Ors [1994] 3 MLJ 185 (refd)

Yong Tim v Hoo Kok Chong & Anor [2005] 3 CLJ 229, FC (refd)

Legislation referred to

Rules of the High Court 1980 O 18 r 19

Andrew Chew (Conrad Lopez with him) (Lee Hishamuddin Allen & Gledhill) for the plaintiff.

MV Kumar (MV Kumar) for the defendants.

Mohamad Ariff J:

INTRODUCTION

[1] This case concerns a claim by the plaintiff bank for monies due and owing under a banking facility of RM12,000,000 granted to the first defendant as borrower. As against the second and third defendants, the plaintiff is suing them in their capacities as personal guarantors. The second and third defendants deny any liability, and in fact deny vehemently that they executed any joint and several guarantee as individuals. The second defendant is the wife of the third defendant.

[2] The main facts leading to the granting of the overdraft facility follow the usual pattern. The first defendant applied for an overdraft facility, the plaintiff after having considered the application, offered the RM12,000,000 overdraft facility to the first defendant via a letter of offer. The first defendant passed a circular resolution to accept the letter of offer, and it is alleged that the third defendant, as director of the first defendant, then signed on the letter of offer signifying acceptance. In consideration of the overdraft facility been granted,

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certain securities were taken by the plaintiff which included the following:

(a) A pledge of 4,800,000 ordinary shares of RM1 each in Kiara Emas Asia Industries Bhd ('Kiara Emas');

(b) a joint and several guarantee from Robitah and Raja Zulkifli to secure the repayment of the principal sum of RM12,000,000 with all interest accrued thereon; and

(c) a pledge of fixed deposits equivalent to not less than six months' interest in respect of the overdraft facility.

[3] The dates of these several documents are important, for reasons which will become apparent below. The application letter is dated 22 January 1997, the letter of offer is dated 3 February 1997, the circular resolution 17 February 1997 and the guarantee is dated 17 February 1997. The third defendant is alleged to have signed as director of the borrower on the letter of offer signifying acceptance on the same date by a circular resolution, namely 17 February 1997.

[4] There is no issue on the utilisation of the overdraft facility which was disbursed in various statements of account to first defendant in this regard, for which the first defendant made a number of repayments. The defendant subsequently failed to make repayments and to regularise the facility, hence resulting in the breach of its repayment obligations under the letter of offer.

[5] In the course of trial, the plaintiff had tendered a Certificate of Indebtedness, which were not challenged and therefore is to be regarded as conclusive, in line with a well settled principle as exemplified in *Cempaka Finance Bhd v Ho Lai Ying* [2006] 3 CLJ 544.

[6] Indeed, the third defendant, when giving evidence as DW1, in fact conceded the first defendant was liable. This concession came during cross-examination:

277

Q: I put it to you that the 1st Defendant is liable to repay the RM12 million term loan to the Plaintiff?

A: Supposedly, yes.

[7] Against this background, the main issues in this case turn on the liability of the second and third defendants as joint and several guarantors. The third defendant denied signing the letter of offer on 17 February 1997. The second and third defendants additionally alleged falsification of the circular resolution carrying the same date. Thirdly, the second and third defendants allege they

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signed a corporate guarantee, but not a joint and several personal guarantee. A fourth point is also raised in relation to the 'corporate guarantee' which was signed, and that concerns an alleged forgery of the signature of the solicitor who was said to have witnessed their signatures.

THE PLEADED CASE

[8] The plaintiff's counsel, at the outset of his submission, emphasised the pleaded case of the defendants. Forgery or fraud, counsel contends, is not part of their pleadings, and such being the case the defendants' present line of argument should be dismissed on this basis. There is force in this argument. The rule that parties are bound by their pleadings is both elementary and mandatory in our system of civil litigation. Aside from allowing parties to know exactly what are the matters in dispute so that they know what facts they have to marshal to prove at trial and thus avoid any element of surprise in civil litigation, the rule also places on record the precise issues presented to the court for adjudication so that the trial can proceed in an orderly and organised manner and avoid the situation where a matter not pleaded may be relitigated in another forum by the parties. It will be conducive to finality of litigation to insist that parties include in their pleadings all the material issues that they may wish to be adjudicated by the court. For these reasons, parties have to be very strictly controlled within the confines of the pleadings, or any amendments that they may require to these. With respect, the defence as filed by the defendants is singularly deficient in this regard. There is absolutely no mention of forgery or fraud in this defence. What is central to the defence is the averment that the first defendant never received the overdraft facility or allowed any excess to its use, and as such all the defendants have no obligation to repay the facility. Further and in the alternative, it is averred by the defendants that the agreement dated 3 February 1997 (ie the letter of offer) is void and unlawful by reason of failure of consideration from the plaintiff. By this reason it is then averred that the guarantee dated 7 February 1997 is likewise unlawful and void as against the second and third defendants. Thus I find that the statement of defence is singularly lacking in particulars as regards any forgery of fraud. Even if the forgery or fraud is pleaded, the rules require the defendants to condescend to particulars as required under O 18 r 19 of the Rules of the High Court 1980. A general allegation of fraud is insufficient and full particulars must be pleaded: *Lee Kim Luang v Lee Shiah Yee* [1988] 1 MLJ 193. See also *Aik Ming (M) Sdn Berhad & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770. Where a matter is not pleaded, the measures open to the court are to either disallow the party from relying on it, or to allow an amendment, or to take this matter into consideration in deciding the case. See *Superintendent of Lands and Surveys (4th Div) & Anor v Hami bin Matusin & Ors* [1994] 3 MLJ 185. In these circumstances, I am inclined to hold that this defence of forgery and fraud should be dismissed on this ground alone.

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Nevertheless, since evidence has been led on this point, I feel it is in the interest of justice to consider the case and submission made on behalf of the defendants in totality, and this I have done. Nevertheless, having heard and considered the evidence, both testimonial and documentary, I am led to conclude that the defendants have not succeeded in establishing their case. On the contrary, on the law and the evidence led, I am satisfied the plaintiff has succeeded to prove its case on a balance of probabilities. If I may briefly state the position, I find the evidence led by the defendants on the issues of fraud and forgery highly improbable. The testimonies of the second and third defendants (who gave evidence as DW1 and DW3) have been inconsistent and evasive and cannot be readily reconciled with the contemporaneous documents.

THE STANDARD OF PROOF FOR FRAUD AND FORGERY

[9] The standard of proof in relation to illegality and fraud in civil proceedings has been set as proof beyond reasonable doubt, defined as meaning not proof beyond all shadow of doubt or degree of certainty but on a high degree of probability. See *Yong Tim v Hoo Kok Chong & Another* [2005] 3 CLJ 229 and *Chu Choon Moi v Ngan Siew Tin* [1986] 1 MLJ 34.

In *Ch Choon Moi*, the court stated:

> Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The degree of proof need not reach certainty but it must carry a high degree of probability. What it means is that the evidence adduced is such that the court believes its existence or a prudent man considers its existence probable in the circumstances of the particular case.

[10] Nevertheless, I have also borne in mind the standard of proof for forgery is on a balance of probabilities.

THE DEFENCES RELATING TO FRAUD AND FORGERY

[11] The first line of defence by the third defendant is that he did not sign the letter of offer. Even assuming he did not, or his signature was forged, the evidence is clear on the point that the overdraft facility was disbursed to the first defendant. In fact there were repayments made until the facility felt into default. In any event, as I have stated earlier, the third defendant actually admitted the first defendant is liable to repay the overdraft facility. The second line of defence by the third defendant (and on this he is joined by the second defendant) concerns the circular resolution of 17 February 1997. The second and third defendants (DW2 and DW1) did not deny signing the circular resolution as directors of the first defendant, but then claimed the contents were altered after they had signed it. Apparently, they believed the overdraft facility would be secured by a guarantee from Dato' Tan. The last paragraph in

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the circular resolution containing the words 'Raja Zulkifli bin Raja Ahmad (NRIC No)' and 'Robitah binti Idris …' apparently did not exist and was inserted without their knowledge. And yet both signed a guarantee thereafter, although (and this is the third line of defence) they maintained throughout the trial what they signed was a corporate guarantee and not a joint and several personal guarantee. The evidence of DW2 is particularly inexplicable on this, since she stated during cross-examination she believed the corporate guarantee she signed with her husband was a corporate guarantee given by Asakura Industry Sdn Bhd — the borrower itself! During the course of the trial the original joint and several guarantee was produced, and it is plain they could not have signed a corporate guarantee, for on the page bearing their signatures the provisions reflect a guarantee document in the nature of a composite guarantee document which can be applied to both a corporate or a personal guarantee depending on which page was signed. The signature pages in this document contained two parts headed '(where the Guarantor (s) is/are individuals)' and '(where the Guarantor (s) is/are Companies)'. DW1 and DW2 signed on the page headed the former. The evidence presented by DW1 and DW2 is therefore highly improbable and cannot stand scrutiny when set against the actual documents.

[12] By way of illustration and to support my conclusion, I reproduce below some pertinent parts of these witnesses' answers during cross-examination.

ASSESSMENT OF THE TESTIMONIAL EVIDENCE OF DW1 AND DW2

[13] DW1

166

Q: Please look at the Guarantee again and look at page 7. Do you agree with me that this is your signature here?

A: Yes.

167

Q: Agree that you signed this?

A: I signed but was a Corporate Guarantee

168

Q: You are the maker of the signature?

A: Agree.

169

Q: Refer to right above 'where the guarantor' with an 'R' initial?

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A: I can't remember.

170

Q: Look at the last page of the Guarantee of Bundle 1. It states there 'where the Guarantor is/R Companies'?

A: Saya tidak pernah lihat muka surat ini. The one that I signed is headed Corporate Guarantee. Setiap muka surat boleh ditanggalkan.

171

Q: This document, there are printed of A3 size on both sides?

A: Agree.

172

Q: When it was given to you at that time, is it like this?

A: It was … this thing was not there.

Court

Your signature there is genuine isn't it?

DW1: Yes, but it was different. The frontpage was not there.

Court

It's all printed. It is not something which you can tear, page by page. Banking documents come in two versions. One is the tear of version and one will be like that printed on A3 paper back to back. This is the second type of banking document. So when you signed your signature which is genuine, the corresponding pages must be there logically when you sign. It cannot simply tear of.

173

Q: Did you ever approach Hong Leong Bank to ask for a sample copy of the Corporate Guarantee which you recall signing?

A: Saya telah serahkan perkara ini kepada peguam saya.

174

Q: I put it to you that you signed this Letter of Guarantee but you cannot remember the details, agree?

A: Saya dan mula dokumen tersebut adalah Corporate Guarantee. Dan bermakna kalau Corporate Guarantee, syarikat yang liable dan bukan saya. Dan yang menguatkan saya ialah, saya lihat name Tan dalam dokumen tersebut.

175

Q: I put it to you that you signed so many documents in the course of your business venture with Tan Hooi Chong that you now claimed cannot remember signing the Letter of Guarantee in Exh. P4, agree?

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A: Ya, saya sign banyak dokumen, tetapi saya ingat saya signed Corporate Guarantee. Saya memang signed Corporate Guarantee dan bukannya Personal Guarantee.

176

Q: You said that you signed the Guarantee without a witness attesting your signatures; did you insist that a witness is present when you signed the Guarantee?

A: Pada masa tu, saya bukanlah seorang yang pakar tentang loan procedure dan saya tidak tahu samada ketika itu witness diperlukan. Tetapi apabila saya telah dituduh signed the so called Guarantee dan selepas berbincang dengan peguam barulah saya difahamkan procedure loan perlu dihadiri oleh peguam dari pihak bank dan ketika itulah saya memberitahu kepada peguam saya bahawa saya tidak pernah jumpa peguam Loh Kian Fah dan juga pihak Bank.

177

Q: Assuming you didn't sign in front of Loh Kian Fah, you were nevertheless prepared to sign a Guarantee without a witness at the material time, agree?

A: Yes because from the beginning it was only Corporate Guarantee.

178

Q: You also said that you signed the Guarantee without the contents explained to you, agree?

A: Yes.

179

Q: You also said that you recall signing a Guarantee and you are conversant in English?

A: Yes.

180

Q: So, you would have read it before sign it?

A: Not all the contents.

181

Q: Did you ask for time to seek legal advice before signing the document?

A: Ketika itu tidak sebab dari mula Tan Hooi Chong memberi Personal Guarantee untuk loan tersebut.

182

Q: You would agree with me that you could have asked for time to seek legal advice before signing the Guarantee?

A: Sepatutnya pihak Bank yang perlu memberi nasihat kepada saya tetapi tidak dibuat oleh pihak Bank.

183

Q: Before signing, did you ask anyone from the Bank to advise you?

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A: Dari mula saya tidak tahu prosidur yang macam mana Bank beri loan dan saya tidak tanya.

184

Q: Do you agree with me that you are now blaming Tan Hooi Chong because Tan Hooi Chong had absconded?

A: Yes.

185

Q: Look at pages 4-5 of Bundle C (Exh. P16)

222

Q: After receiving this Letter of Demand did you write to the Bank and tell the bank that you signed the so called Corporate Guarantee?

A: I can't remember.

223

Q: You can't remember because you never did it or is it because you did it but you cannot remember when?

A: I can't remember whether I write to the Bank or not.

224

Q: I say to you that you didn't write to the Bank to tell the Bank that you signed a Corporate Guarantee?

A: I don't know.

225

Q: Would you agree that if you did and because it is an important issue, you would now have the copy of the letter?

A: No, I don't have the copy even this one.

[14] DW2

1

Q: You said you signed a Corporate Guarantee? Is that correct?

A: The front says Corporate Guarantee but I cannot confirm that.

2

Q: You will agree that a Corporate Guarantee means one company guaranteeing the debt of another company? You agree?

A: I don't know.

3

Q: You don't know? So what do you understand at the time to be a Corporate Guarantee?

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A: That is a Guarantee given by Asakura Industry and I was merely signing as a Director of a Company.

4

Q: But at the time did you not sign a Circular Resolution that accepted a loan from HLBB to Asakura?

A: Yes.

5

Q: If that was the case, how can it be possible that Asakura was guaranteeing a loan it was taking itself?

A: I don't know about procedure, but as far as I know Tan is guaranteeing the loan.

6

Q: In your days in BBMB holdings, you would have come across a Guarantee?

A: I might have.

7

Q: You were in retail loan?

A: I was doing the admin work of the Company.

8

Q: But being in BBMB holdings you would have basic knowledge about banking.

A: A bit.

…

99

Q: Have got a loan yourself? Any personal loan in your own name?

A: Yes.

100

Q: In your personal loan is there a Guarantee involved?

A: No.

101

Q: So, you did a Diploma in Business, I am sure in the course of your studies you would roughly know what is a Guarantee?

A: But the fact remains I remember signing a Corporate Guarantee.

102

Q: But the point is this, you will agree that somebody else is guaranteeing the loan of another person. Correct?

A: Yes.

103

Q: So. It is not possible you could have signed a Corporate Guarantee.

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A: Because Dato Tan said it was a Corporate Guarantee. So I signed the Corporate Guarantee.

104

Q: So then you will know, was it explained to you how the loan works?

A: No, but I did know the loan was secured by Kiara Emas Industries, the 4.8 shares and Dato' Tan's Personal Guarantee.

105

Q: This is fortified by the fact that you signed a Circular Resolution saying the Guarantee will be given by Dato' Tan, is that correct?

A: Yes.

106

Q: If that is the case, why were you still signing the Corporate Guarantee?

A: I don't know.

107

Q: Why didn't you decline signing?

A: Because I thought it was the standard procedure.

108

Q: But your husband just told you that it would be backed by Dato' Tan?

A: It was only a Corporate Guarantee.

109

Q: By whom?

A: I don't know, because I am signing as a director.

110

Q: I put it to you that you didn't sign a Corporate Guarantee. Do you agree?

A: No.

111

Q: I put it to you that the Guarantee you signed is the Guarantee at Exhibit P5.

A: No, I signed a Corporate Guarantee.

THE ALLEGED FORGERY

[15] This particular defence is based on the attestation by one Loh Khian Fah in the letter of guarantee. Loh, who was then a practicing advocate and solicitor, has filed a police report and made a statutory declaration to say that his signature had been forged in that document. Loh was not called as a witness. Evidence was given orally by DW1 that Loh had migrated to Australia

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and no longer practising in Malaysia. Although I allowed the police report and the statutory declaration to be admitted as evidence, the weight to be attached to them must necessarily be slight in the absence of an opportunity to cross-examine Loh. This particular piece of evidence is inherently insufficient to tilt the balance. In any event, the second and third defendants do not deny signing. Their signatures are not forged, and there is no requirement in law for their signatures to be attested.

[16] The last witness for the defence, Siti Nor bt Hussain, provided evidence of an alleged forgery of her signature in another facility granted by a different bank. This evidence, if at all relevant, must also be regarded as having little weight. It was in relation to a different transaction, and even assuming the 'common link' between that transaction and the present transaction can be established, the fact still remains the second and third defendants signed the present guarantee. Their signatures are genuine.

CONCLUSION

[17] For the above reasons, I am therefore allowing the claim of the plaintiff and record judgment as prayed in the statement of claim, prayers (a) and (b). Cost to be taxed to be paid by the defendants to the plaintiff.

Application allowed with costs to be taxed.

Reported by Ashgar Ali Ali Mohamad